

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-HC-2137-H-JG

UNITED STATES OF AMERICA)	
)	
Petitioner,)	PREHEARING ORDER
)	
v.)	Local Civil Rule 16.1(c)
)	
EARL WEBSTER COX,)	
)	
Respondent.)	
)	

I. STIPULATIONS:

- A. All parties are properly before the Court.
- B. The Court has jurisdiction of the parties and the subject matter.
- C. All parties have been correctly designated.
- D. There is no question as to misjoinder or non-joinder of the parties.
- E. This action arises under the Adam Walsh Act, 18 U.S.C. § 4248, and this Court has original jurisdiction.
- F. Venue of this matter is proper.
- G. At trial, the parties will submit a Joint Trial Notebook, which will contain the exhibits to which the parties have stipulated to the authenticity and admissibility.

H. Facts:

1. On July 12, 2011, Respondent Earl Webster Cox ("Cox") was certified as a sexually dangerous person pursuant to 18 U.S.C. § 4248.
2. At the time of his certification, Cox was in custody of the federal Bureau of Prisons at the Federal Correctional Institution in Butner, North Carolina, serving a 120-month federal term of imprisonment to be followed by a three-year term of supervised release as a result of his convictions for Attempted Enticement of a Minor to Travel in Interstate Commerce for Sexual Activity, in violation of 18 U.S.C. §§ 2422(a) and 2426(a), and Receipt of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) (Criminal Docket No. 03-CR-45-01-RB (District of Colorado)).
3. Cox's projected release date on the above-referenced offense was approximately September 27, 2011.

II. CONTENTIONS:

A. PETITIONER

1. Facts: Cox has also previously engaged or attempted to engage in sexually violent conduct or child molestation. Cox has previously been convicted of Sodomy with a Child Under the Age of 16, six counts of Striking a Child Under the Age of 16, and six counts of Taking Indecent Liberties With a Child Under the Age of 16, in a United States Air Force general court martial (General Court Martial Order No. 6) (May 14, 1982).

2. Issues:

- (a) Has Earl Webster Cox engaged in or attempted to engage in sexually violent conduct or child molestation?
- (b) Is Earl Webster Cox sexually dangerous in that he suffers from a serious mental illness, abnormality or disorder, and as a result of his serious mental illness, abnormality or disorder, would have serious

difficulty in refraining from sexually violent conduct or child molestation if released?

B. RESPONDENT: Earl Webster Cox is not a "sexually dangerous person" within the meaning of 18 U.S.C. § 4247(a) (5).

III. EXHIBITS

A. PETITIONER:

No.	Description	Bates Stamp ## s	Objections
1	Certification of a Sexually Dangerous Person.	1230-1235	
2	CV of Dr. Jeffrey Davis	N/A	
3	Forensic Evaluation for Civil Commitment as Sexually Dangerous Person by Dr. Jeffrey Davis dated October 2, 2011.	1768-1809	
4	CV of Dr. Heather Ross	N/A	
5	Forensic Pre-Certification Report by Dr. Heather Ross dated January 28, 2011	1195-1212	
6	CV of Dr. Plaud	N/A	
7	Forensic Evaluation by Dr. Joseph Plaud dated November 21, 2011.	Resp. 1-17	
8	Deposition of Earl Webster Cox	N/A	
9	Amended Judgment in <u>US v. Cox</u> , Crim. No. 03-DCR-0045-RB-01, filed February 24, 2004.	1260-1267	Inauthentic
10	Judgment in <u>US v. Cox</u> , Crim. No. 03-DCR-0045-RB-01, filed December 4, 2003.	14-20	Inauthentic

11	US v. Cox, Crim. No. 03-DCR-0045-RB-01, Superseding Indictment	154-157	Inauthentic
12	US v. Cox, Crim. No. 03-DCR-0045-RB-01, Plea Agreement.	158-167	Inauthentic
13	Presentence Investigative Report dated October 26, 2003.	1649-1674	Inauthentic ; Hearsay as to stmts by 3d parties
14	United States v. Cox, 18 M.J. 72, No. 45099, ACM 23543 - United States Military Court decision affirming Cox's conviction as published in the West's Military Justice Reporter.	1763-1767	
15	Psychology Services Intake Screening Summary.	235-236	Inauthentic
16	PDS Note dated December 15, 2010.	1213	Inauthentic
17	PDS Noted dated August 11, 2009.	1214	Inauthentic
18	PDS Note dated January 14, 2004.	1221-22	Inauthentic
19	Overland Police Department Police Report.	1291-1299	Inauthentic ; Hearsay as to 1291-92
20	General Court Marshal Order No. 6 dated May 14, 1982.	1302-1306	Inauthentic

Petitioner reserves the right to designate and use any exhibits identified by Respondent in this action.

B. RESPONDENT

Respondent reserves the right to designate and use any

exhibits identified by Petitioner in this action.

IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS

A. PETITIONER

Petitioner designates the entire pleadings and responses and the transcripts of the following deposition for purposes of cross-examination: Earl Webster Cox. Petitioner reserves the right to use, as necessary, all portions of these documents, as appropriate, pursuant to the Federal Rules of Evidence and the Local Rules.

B. RESPONDENT

Respondent reserves the right to designate and use any pleadings and discovery materials identified by Petitioner in this action.

V. WITNESSES

A. PETITIONER

Name	Address	Proposed Testimony
Dr. Jeffrey Davis	P.O. Box 6243, Los Osos, CA 93412	Expert Testimony re: Issues (a) and (b) identified by Petitioner
Dr. Joseph Plaud	44 Hickory Lane, Whitinsville, Mass. 01588	Expert Testimony re: Issues (a) and (b) identified by Petitioner
Dr. Heather Ross	Federal Correctional Complex Psychology Services P.O. Box 1000 Butner, NC 27509	Expert Testimony re: Issues (a) and (b) identified by Petitioner

Earl Webster Cox	Respondent	Testimony re: prior offenses and convictions, and facts relating to same
Karen Paynter	Federal Correctional Complex P.O. Box 1000 Butner, NC 27509	Ms. Paynter is a Case Worker at FCI Butner and the Records Custodian at FCI Butner for Adam Walsh Act cases. If necessary, she will be called to testify that the documents offered are kept in the regular course of business in a system of records that they are required to maintain.

Petitioner reserves the right to call any witness listed by Respondent in this Pretrial Order. Petitioner reserves the right to call rebuttal witnesses, as appropriate.

B. Respondent

Respondent reserves the right to call any witness listed by Petitioner in this Pretrial Order. Respondent reserves the right to call rebuttal witnesses, as appropriate.

TRIAL TIME ESTIMATE: Two days.

The parties respectfully reserve the right to amend this proposed prehearing order within seven days of its filing.

Respectfully submitted, this 29th day of May 2012, by,

FOR PETITIONER:

THOMAS G. WALKER
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APPROVED BY:



James E. Gates
United States Magistrate Judge
8 September 2012